

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

CAROL BLANCHARD, EXECUTIVE DIRECTOR )  
OF THE TEAMSTERS UNION 25 HEALTH SERVICES )  
& INSURANCE PLAN, )

Plaintiff, )

v. )

LM HEAVY CIVIL CONSTRUCTION, LLC, )

Defendant. )

**C.A. No.**

**COMPLAINT**

1. This is an action under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, brought on behalf of Teamsters Union 25 Health Services & Insurance Plan (“the Health Plan”) for damages and injunctive relief arising from a refusal to produce documents necessary for a payroll audit.

2. This court has jurisdiction pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) and venue lies in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

3. Plaintiff, Carol Blanchard, is the Executive Director of the Plan and is a “fiduciary” within the meaning of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

4. The Health Plan is an “employee welfare plan” or “welfare” within the meaning of ERISA § 3(37)(A), 29 U.S.C. § 1002(37)(A) and is an “employee benefit plan” or “plan” within the meaning of ERISA § 3 (1) and (3), 29 U.S.C., § 1002(1) and (3). The Health Plan has its principal office at and is administered from 16 Sever Street, Sullivan Square, Charlestown, Massachusetts.

5. Defendant LM Heavy Civil Construction, LLC (“LM Heavy”) is an employer with a principal place of business at 100 Hancock Street, Suite 901, Quincy, Massachusetts.

6. Defendant LM Heavy is an “employer” within the meaning of Section 3(5) of ERISA, 29 U.S.C. § 1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C § 142(1) and 29 U.S.C. § 152(2), (6) and (7).

7. Teamsters Local Union No. 25 is a “labor organization” within the meaning of 29 U.S.C. § 152(5).

8. At all material times, Defendant LM Heavy was obligated by the terms of one or more collective bargaining agreements (“CBAs”) between it and Teamsters Local Union No. 25 and by the terms of the Health Plan’s Agreement and Declaration of Trust (“Trust Agreement”) to which Defendant LM Heavy is bound, to make contributions on behalf of Defendant LM Heavy’s employees covered by these agreements.

9. At all times material and under the terms of the CBAs and Trust Agreement, Defendant LM Heavy was obligated to pay monthly contributions to the Health Plan on behalf of certain employees based on the employees’ hours of service for the purpose of providing health benefits.

10. ERISA § 209, 29 U.S.C. § 1059(a) requires an employer to “maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees.”

11. Paragraph 11, Section E of the Trust Agreement entitled “Duties of Employer” states:

The Trustees shall have the right to require such reports as are necessary for the fulfillment of this Declaration of Trust and...each Employer and the Union (the members of which are covered by this agreement) shall promptly furnish to the Trustees on written demands such records of the Employees as their names, Social Security number, payroll records, and other information as may be necessary in connection with the administration of this Trust and said policies.

The Trustees may examine the pertinent records of each Employer at the Employer's place of business whenever they deem such examination to be necessary for the proper administration of the Trust Estate.

12. At all material times, Defendant LM Heavy was obligated to allow the Plaintiff to conduct an examination of Defendant LM Heavy's payroll and wage records ("the Audit") pursuant the Health Plan's Trust Agreement.

13. The purpose of the Audit is to ensure that the Defendant LM Heavy has accurately recorded and paid health contributions in compliance with the terms of the aforementioned CBA, the Trust Agreement, and ERISA § 515, 29 U.S.C. §1145.

14. Specifically, the Plaintiff has requested the following documents in order to complete a payroll audit:

- Weekly payroll journals for January 1, 2017 through December 31, 2019.
- Individual earnings records (to include time cards) on all employees for January 1, 2017 through December 31, 2019.
- All Internal Revenue Service Forms W-2's and W-3 for January 1, 2017 through December 31, 2019.
- All federal and state quarterly payroll reporting forms for January 1, 2017 through December 31, 2019.
- All Internal Revenue Service Forms 1099's and 1096 for January 1, 2017 through December 31, 2019.

15. Defendant LM Heavy has refused to comply with Plaintiff's request for the documents cited above.

WHEREFORE, Plaintiff demands that judgment enter against Defendant LM Heavy Civil Construction, LLC in accordance with Section 502 (g)(2) of ERISA, 29 U.S.C. § 1132(g)(2) ordering that:

1. Defendant LM Heavy produce all documents set forth in Paragraph 14 of this Complaint within ten (10) days of the Order from this Court;
2. Defendant LM Heavy pay all attorneys' fees and costs incurred by Plaintiff in connection with this action; and
3. Ordering such other and further relief as this court may deem just and proper.

Dated: December 21, 2020

Respectfully submitted,

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/s/ Melissa A. Brennan  
Melissa A. Brennan, Esq.  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I, Melissa A. Brennan, hereby certify that I caused a copy of the foregoing to be mailed this date by certified mail, return receipt requested, to the United States Office of the Treasurer and the Department of Labor.

Dated: December 21, 2020

/s/ Melissa A. Brennan  
Melissa A. Brennan, Esq.